

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

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UNITED STATES, et al., : Civil Action No.:  
 : 1:23-cv-108  
 :  
Plaintiffs, :  
 :  
versus :  
 :  
 : Friday, April 19, 2024  
GOOGLE LLC, : Alexandria, Virginia  
 :  
 : Pages 1-23  
Defendant. :  
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The above-entitled motions hearing was heard before  
the Honorable John F. Anderson, United States Magistrate  
Judge.

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P R O C E E D I N G S

THE DEPUTY CLERK: United States, et al. versus Google LLC, Civil Action Number 23-cv-108.

MR. MENE: Good morning, Your Honor. Gerard Mene with the U.S. Attorney's Office.

MS. WOOD: Good morning, Your Honor. Julia Wood for the Department of Justice for the plaintiffs. My colleague, Michael Wolin, will be arguing today.

THE COURT: Okay.

MR. WOLIN: Good morning, Your Honor. Michael Wolin from the Department of Justice.

THE COURT: Thank you.

MR. TEITELBAUM: Good morning, Your Honor. Aaron Teitelbaum, also from the Department of Justice.

THE COURT: Thank you.

MR. HENRY: Good morning, Your Honor. Ty Henry from the Virginia Attorney General's Office on behalf of the plaintiff states.

THE COURT: Thank you.

MR. JUSTUS: Good morning, Your Honor. Bradley Justus for Google. I have my colleagues, Kenina Lee and Caroline Boisvert, and then Craig Reilly, our local counsel.

THE COURT: Okay. Who's going to argue for?

MR. JUSTUS: I will.

1 THE COURT: Okay. Thank you. Well, I've read the  
2 papers that the parties submitted, so I'll hear any  
3 arguments that you want to make.

4 Thank you.

5 MR. WOLIN: Thank you, Your Honor.

6 The focus of plaintiffs' motion is one question,  
7 should the Texas case against Google be treated differently  
8 than the MDL case against Google, and we believe the answer  
9 is no, it should be treated the same.

10 THE COURT: Let me just make sure I understand the  
11 facts. When Texas was part -- well, let me step back.

12 The case that got transferred from Texas to the  
13 MDL and then from the MDL back to Texas, was the case that  
14 was transferred to the MDL the entire action that was  
15 pending in Texas, or were there other parties in the Texas  
16 action that continued with a case in Texas and then were  
17 rejoined by the attorney general of Texas and the others?

18 MR. WOLIN: No, Your Honor. The entire case that  
19 Texas's co-plaintiffs filed against Google was transferred  
20 to the MDL and then subsequently remanded to Texas.

21 THE COURT: And when the coordination order was  
22 negotiated in the MDL and in this court, at that time, the  
23 Texas -- the request to transfer the case back to Texas was  
24 pending, so the parties knew that that was something that  
25 was on the horizon or could happen; is that right?

1 MR. WOLIN: Yes, that's correct, Your Honor. The  
2 parties anticipated that any case that was in the MDL could  
3 be remanded to its home district, either during discovery or  
4 after discovery was over, which was the reason that the  
5 coordination order allowed for that. But, in this instance,  
6 it's important.

7 THE COURT: Well, it specifically says that if  
8 it's transferred, that the party will be a non-party. That  
9 once it gets transferred, that party whose case gets  
10 transferred is considered to be a non-party.

11 MR. WOLIN: It says, Your Honor, that if any case  
12 gets transferred out of the MDL, the parties will meet and  
13 confer and determine at that time, based on where each case  
14 is in its timeline, what additional coordination is  
15 necessary or proper. And we believe in this instance,  
16 because Texas was transferred while there was still  
17 discovery outstanding in Texas, that it was important.

18 THE COURT: Well, that's -- let's look at the  
19 order. Do you have it in front of you?

20 MR. WOLIN: Yes. Of course, Your Honor.

21 THE COURT: Okay. Well, it talks about some  
22 discussions, but it also says that the transferred case,  
23 they will be treated as a non-party; doesn't it?

24 MR. WOLIN: Yes. That's correct, Your Honor.

25 THE COURT: Okay. So unless and until something

1 happens, they're a non-party.

2 MR. WOLIN: That's correct, Your Honor. And  
3 that's why we're here today because the coordination order  
4 suggested that the parties meet and confer and determine  
5 what coordination would be appropriate, and we believe that  
6 further coordination is appropriate, given that discovery is  
7 continuing in Texas and depositions are going to be taken,  
8 including depositions of witnesses that are listed on the  
9 parties' initial disclosures in this case.

10 And in that instance, we think that continuing the  
11 coordination order is appropriate, specifically because it  
12 allowed for the plaintiffs in this case to obtain deposition  
13 transcripts for witnesses that were deposed in other cases  
14 after discovery closed in this case. And that was part of  
15 the benefit that we bargained for, and we think that it's  
16 appropriate to order that given that and all the other  
17 reasons that we put forward for why coordination makes  
18 sense.

19 THE COURT: Well, your brief says that the  
20 New York court has not -- that the approval of the New York  
21 court has not occurred to date.

22 MR. WOLIN: Yes. That's correct, Your Honor.

23 THE COURT: It was denied; right?

24 MR. WOLIN: It was denied.

25 THE COURT: Well, help me understand how you can

1 tell me in your opening brief that it has not occurred to  
2 date, when, in fact, it has been requested and denied.

3 MR. WOLIN: Well, I mean, it hadn't occurred at  
4 the time that we filed it. It's always open to reurging by  
5 the parties in the MDL. The coordination order in the MDL  
6 was jointly proposed by Google and the MDL plaintiffs.  
7 Judge Castel decided not to implement it; he had his  
8 reasons.

9 But, respectfully, that's not the situation that  
10 we have in our case. Discovery is still open in the MDL,  
11 and Judge Castel's order was premised on the idea that it  
12 might slow down discovery here -- in that case. But, here,  
13 discovery is closed; it's not going to slow anything down.  
14 We're just asking to be able to obtain the deposition  
15 transcripts and documents that Google obtains in Texas  
16 without any burden on Texas itself.

17 We specifically set up the coordination order so  
18 there would be no burden. We can order the deposition  
19 transcripts directly from the court reporters. Google is  
20 not involved in that at all. They don't have to produce any  
21 documents to us. It's their choice. If they want to  
22 produce documents that they obtain in Texas and thereby get  
23 the right to use those in our case, it's their option;  
24 they're not forced to do it. And we think this is an  
25 important issue particularly because --



1 THE COURT: Well, if it's an important issue and  
2 the case was transferred to Texas November 1 and you're  
3 bringing this to the Court at the end of April, why do you  
4 wait five months to do that if it's so important an issue  
5 for you?

6 MR. WOLIN: Of course, Your Honor.

7 The process of transferring the case to Texas was  
8 very long and drawn out; it had to go through the JPML, as  
9 well as the Second Circuit. And then once the case was  
10 transferred to Texas, the parties in the Texas litigation  
11 began negotiating their own coordination order, which we  
12 discussed in our brief, which would have provided us access  
13 to deposition transcripts from that case, which was the main  
14 objective, the main bargain that we had wanted out of the  
15 coordination order. And when it looked like that wasn't  
16 occurring, we realized that really the better path would be  
17 to just fully extend the coordination order to the Texas  
18 case again as it was when the coordination order was  
19 eventually -- or was first implemented. And we met and  
20 conferred with Google, and now we're before Your Honor.

21 We observed in the Texas litigation that the judge  
22 there seemed open to coordination with this case. He had  
23 ordered that the deposition transcripts from the Texas case  
24 could be shared with us, and then when the coordination  
25 order didn't come into effect because of Judge Castel, he

1 said again from the bench that he would be welcoming  
2 coordination between the cases, and he would be there  
3 willing to help if it was needed by the parties.

4 THE COURT: Well, help me understand. If I was  
5 inclined to grant your request, is that a back door getting  
6 around what Judge Castel has already done? Since the MDL  
7 parties have access to the discovery in this case, wouldn't  
8 I be somehow or another undoing what he had already decided,  
9 which you say in your brief it hasn't occurred to date when  
10 it had actually been decided?

11 And that is -- that is troublesome that you would  
12 write a brief and present it to the Court in a matter that  
13 has been presented to a district judge in the MDL and  
14 decided and tell me that it has not -- that nothing has  
15 occurred to date.

16 MR. WOLIN: We apologize for that, Your Honor. We  
17 thought we were clear.

18 But to get to Your Honor's question, we don't  
19 think it's a back door way around Judge Castel's opinion on  
20 not allowing further coordination between the MDL and the  
21 Texas case.

22 Judge Castel already implemented coordination with  
23 this case and the --

24 THE COURT: But if you get discovery in this case,  
25 it's coordinated with the MDL case; right?

1 MR. WOLIN: Castel ruled about coordination of  
2 depositions that still were taking place between the MDL and  
3 the Texas case, but that's not the -- we don't have any  
4 ability to share the depositions that we obtained from Texas  
5 if the order is implemented with the MDL. The coordination  
6 order covers discovery obtained in this case -- the existing  
7 coordination with the MDL covers the discovery that we  
8 obtained in this case; it doesn't necessarily cover the --  
9 anything that we would get for impeachment purposes.

10 THE COURT: But documents you get in this case you  
11 share with the MDL; right?

12 MR. WOLIN: It would give -- I mean, the  
13 coordination order now does give us the ability to share  
14 discovery, correct.

15 THE COURT: Right. And deposition transcripts are  
16 discovery.

17 MR. WOLIN: Yes, Your Honor.

18 THE COURT: A product of discovery.

19 So wouldn't -- if, in fact, you know, you were  
20 getting deposition transcripts from the 80-or-so depositions  
21 that are going on in Texas -- which is much different than  
22 when this was negotiated. There was a set number of  
23 depositions that were going to be taken in the MDL and in  
24 our case, now Texas apparently has decided you can take up  
25 to 80 depositions or something, so it's a much different

1 animal now. But if you get a deposition transcript through  
2 a coordination order in our case, doesn't that give the MDL  
3 proceeding access to that since it's discovery in this case?

4 MR. WOLIN: I don't think that's necessarily  
5 correct. The Texas protective order may prevent that,  
6 but --

7 THE COURT: Well, the -- I don't know the Texas  
8 protective order. I don't know whether it allows you to get  
9 it here; so ...

10 MR. WOLIN: I mean, the Texas protective order  
11 requires that discovery from the Texas case only be used in  
12 that case, which is why a coordination order with that case  
13 would be required to use some of the discovery here.

14 But Judge Castel didn't seem to be worried about  
15 sharing of the -- under the coordination order even if it  
16 applied to the Texas case. He was most concerned with not  
17 slowing down the depositions that were occurring in the MDL.

18 THE COURT: And when are they going to be done,  
19 the depositions in the MDL?

20 MR. WOLIN: June 28th.

21 THE COURT: And when's the Texas?

22 MR. WOLIN: May 3rd, Your Honor.

23 THE COURT: May 3rd?

24 MR. WOLIN: Yes.

25 THE COURT: Okay. And how many depositions are

1 they allowing in the Texas case?

2 MR. WOLIN: In the Texas case, they're allowed 40  
3 per side.

4 THE COURT: When you negotiated this order --  
5 coordination order, at that point in time, how many  
6 depositions were the parties allowed to take?

7 MR. WOLIN: In this case, the parties were allowed  
8 10 party depositions and 20 third-party depositions. In the  
9 MDL case, Judge Castel put an initial limit of 15  
10 depositions per side, but was open. As I think he said in  
11 his discovery order, he would be open to extending that for  
12 a showing of good cause.

13 But, Your Honor, nothing in the coordination order  
14 and the negotiations that went into it were premised on the  
15 number of depositions. It doesn't say in the coordination  
16 order that it only applies if the number of depositions are  
17 roughly equivalent, or it would not apply if Judge Castel  
18 ordered more depositions.

19 The number of depositions is really not the most  
20 important factor here. The factor here is the fact that  
21 Google is out there taking these depositions. And Google  
22 has an equal number of depositions in Texas as the Texas  
23 plaintiffs do, so there's no unfairness there. But the  
24 unfairness to us here is because Google is out there taking  
25 these depositions of parties that are listed on our initial

1 disclosures that may have been deposed in our case, and  
2 there's really an unavoidable risk to Google's counsel, who  
3 are the same counsel in this case. Two of the same law  
4 firms and several of the same individual lawyers appeared in  
5 both cases. The harm to us is that they will be out there  
6 taking depositions of these witnesses and then making  
7 decisions about whether to call those witnesses and how they  
8 examine them at trial in our trial here in this courthouse.

9 And even if they do their best to not share  
10 information between the cases -- which wouldn't be  
11 allowed -- it's just human nature that it's inevitable that  
12 they will unconsciously make decisions based on information.  
13 They can't unknow something that they learned in the Texas  
14 case from the depositions they're taking there when they're  
15 making the decisions about what witnesses to call here and  
16 how to cross-examine witnesses that we may call.

17 Thank you, Your Honor.

18 THE COURT: Okay.

19 MR. WOLIN: Do you have questions?

20 THE COURT: No. Thank you.

21 MR. WOLIN: Thank you.

22 MR. JUSTUS: Thank you, Your Honor.

23 THE COURT: Go ahead.

24 MR. JUSTUS: Thank you, Your Honor.

25 This circumstance of Texas being remanded to a

1 separate proceeding was considered when the coordination  
2 order was entered, and Texas was explicitly carved out of  
3 this coordination order in the event of remand for the  
4 obvious reason that the circumstances may be very different  
5 when and if the case got remanded. And now we're in those  
6 different circumstances.

7 This case has had discovery closed for seven  
8 months. Summary judgment is due next Friday. We're going  
9 to trial later this year, and Texas has -- the Texas case  
10 allows a number of depositions in this case that is far in  
11 excess of those that have -- the Texas case allows a number  
12 of depositions in that case that is far in excess of the  
13 number of depositions that were allowed in this case.

14 If this coordination order modification were  
15 granted, more depositions would come back into this case  
16 than were initially taken in this case.

17 THE COURT: They would only come back in this case  
18 for the purposes of impeachment; is that right?

19 MR. JUSTUS: Yes, Your Honor. They would come  
20 back in for the purposes of impeachment.

21 But the problem is is what sort of asymmetry does  
22 that create? The DOJ, I think, more or less concedes in  
23 their reply brief that if this modification is granted, they  
24 will discuss the Virginia discovery materials with Texas.

25 THE COURT: Well, they had a right to discuss it

1 with Texas up until the case got transferred.

2 MR. JUSTUS: Absolutely. The problem is is that  
3 they can discuss it with Texas, suggest lines of questioning  
4 for these Texas depositions of Google employees, they will  
5 bring those depos back into this Virginia case for either  
6 impeachment, and also maybe even more importantly, to guide  
7 their trial strategy. And this is after the government has  
8 had three years of pre-suit investigation, numerous depositions  
9 here. It really works a huge asymmetry. And, again, this  
10 case is buttoned up and getting ready for trial. This isn't  
11 the time to bring back in all this new paper.

12 THE COURT: How many depositions have been taken  
13 in the Texas case?

14 MR. JUSTUS: So, to date -- it's a small number.  
15 I think -- I think it's less than ten; however, over the  
16 next three weeks of discovery, and possibly for a limited  
17 extension of discovery, there are multiple depositions happening  
18 every day.

19 THE COURT: And what --

20 MR. JUSTUS: Almost every day, I think.

21 THE COURT: Tell me a little bit more about the  
22 issue that was presented to Judge Castel and his decision on  
23 that front in the -- I guess the decision not to coordinate  
24 between Texas and the MDL proceeding.

25 MR. JUSTUS: Yeah. So I think that the parties



1 presented to Judge Castel the possibility of entering this  
2 coordination order between the current MDL and Texas. And  
3 Judge Castel denied it, saying that the MDL case is getting  
4 towards the end of discovery, and now is not the time to  
5 bring in new deposition coordination into that case,  
6 recognizing discovery is almost over.

7 In a lot of ways, Your Honor, I think Judge Castel  
8 had more reason to grant this than this Court does, because  
9 if Judge Castel had granted this, there was some efficiency  
10 in that certain Google deponents wouldn't have had to sit  
11 twice, certain third-parties wouldn't have had to sit twice.  
12 If this Court granted that relief, even that benefit would  
13 not be there, as Your Honor pointed out.

14 There would also be this weird result where  
15 there's all this material flowing back into the MDL in  
16 contravention of Judge Castel's order through kind of a back  
17 door amendment.

18 THE COURT: All right. I think I understand your  
19 argument.

20 I'll hear anything else from the plaintiffs.

21 MR. WOLIN: Yes, Your Honor. I want to start with  
22 just a few points, Your Honor.

23 First, counsel from Google talked about the  
24 ability of -- or the potential that the United States or the  
25 plaintiffs in this case would coordinate directly with

1 counsel for Texas to discuss questions or something along  
2 those lines. And those were pointed out in our paper.  
3 They're their own litigants, they're doing their own  
4 strategy.

5 But what's more important, I think, is Google that  
6 has the same attorneys who are representing it in both cases  
7 and are doing that type of coordination already. They have  
8 sent subpoenas to many third parties out of the Texas  
9 litigation, including the federal agencies who provided  
10 documents in this case, which -- and asking to renotece  
11 discovery from this case in the Texas case, which shows that  
12 they're already crafting their discovery strategy in the  
13 Texas case based on information from this case. So that  
14 type of coordination or strategizing was already occurring.

15 And the second thing I want to just go back to is  
16 the provision in the coordination order about what would  
17 happen if a case was remanded. The -- at the time the  
18 parties were negotiating the coordination order, they  
19 understood that, at some point, cases from the MDL would be  
20 remanded to their home districts for trial or additional  
21 proceedings, and the parties negotiated and agreed to the  
22 language that they would -- if that occurred, they would  
23 continue to meet and confer about whether and how  
24 coordination would occur.

25 THE COURT: Well, but -- there is that language,

1 but there's also two specific instances in the coordination  
2 order in paragraph bb -- 1bb: "For the avoidance of doubt,  
3 unless and until a further order directs otherwise, an  
4 individual or entity ceases to be a party" -- that is party  
5 under the terms of this agreement -- "if all claims that it  
6 asserts or have been asserted against it in the MDL of the  
7 Virginia case have been dismissed or otherwise adjudicated  
8 by a district court or transferred to a court other than one  
9 of the district courts."

10 MR. WOLIN: Yes.

11 THE COURT: And then it says in paragraph 9: "If  
12 all claims brought by an MDL plaintiff are dismissed,  
13 transferred or remanded, then the MDL plaintiff shall be  
14 treated as a non-party for the purposes of this order after  
15 such dismissal, transfer or remand."

16 MR. WOLIN: Yes, Your Honor. And that's why we're  
17 before Your Honor today.

18 But what is important is that when we were  
19 negotiating it, we contemplated that a remand after  
20 discovery had been completed in the MDL and there would be  
21 no more discovery in the home district, it would be very  
22 different than a remand in this circumstance where Texas was  
23 remanded with additional --

24 THE COURT: Where does it say that in this? You  
25 know, Texas was fighting long and hard to get this case out

1 of the MDL at the time this was being negotiated, you knew  
2 that. That isn't what you say here.

3 MR. WOLIN: Well, Your Honor, the order says what  
4 it says, and it says that there would be further discussion  
5 about whether and how there would be additional  
6 coordination, which contemplates that there could be an  
7 additional order, which is why we're here today seeking that  
8 additional order, because for all of the reasons that it  
9 made sense to order coordination when Texas was part of the  
10 MDL, it still makes sense to order coordination with the  
11 Texas case now that it's separate from the MDL.

12 THE COURT: All right.

13 MR. WOLIN: Just one final point, Your Honor.

14 At the time the coordination order was entered,  
15 remand was with the Second Circuit. Google was opposing it  
16 at that point. So it was not at all clear that there would  
17 actually be a remand of the Texas case to its home  
18 jurisdiction.

19 THE COURT: And again, explain to me why you're  
20 bringing this to me in April when the remand became  
21 effective in November.

22 MR. WOLIN: As I explained, Your Honor, the --  
23 after the remand became effective, the Texas -- Texas and  
24 Google proposed coordination orders to the Court there,  
25 which would have provided the Virginia plaintiffs with the

1 same benefits that they were seeking here. We thought if  
2 that was sufficient to meet -- to create the level playing  
3 field that we were hoping for at trial that we wouldn't have  
4 to burden the Court, but it seems like that's not happening.  
5 And it's not happening for any reason -- it's happening  
6 because Judge Castel didn't want to coordinate his case with  
7 the Texas case -- with the MDL with the Texas case. It had  
8 nothing to do with the provision that the Virginia  
9 plaintiffs would be able to obtain deposition transcripts  
10 from the Texas case.

11 I mean, Judge Jordan in Texas agreed with that and  
12 ordered it. But to effectuate that, because Judge Castel  
13 didn't enter the order, we needed to come here, which is  
14 what we're doing and what was contemplated in the  
15 coordination order originally, that we would seek additional  
16 relief if it was justified when a remand occurred.

17 THE COURT: All right. Thank you.

18 MR. WOLIN: Thank you, Your Honor.

19 THE COURT: Well, I've reviewed the materials that  
20 the parties submitted, I've heard the argument that's been  
21 presented here today. At this point, I don't think that the  
22 motion should be granted.

23 First of all, you know, this coordination order  
24 was negotiated through a long and difficult process, and the  
25 parties agreed to certain provisions at that time. And at

1 that time, the case was the MDL case and the Virginia case,  
2 and the discovery was set as to what was going to be  
3 happening in the MDL case and what was going to be happening  
4 in the Virginia case.

5 The parties, you know, made an agreement at that  
6 point in time, and the agreement is specific, where it says  
7 that if a case gets transferred or remanded -- and this  
8 is -- you know, everybody knew it was -- potentially it was  
9 going to happen, that that was -- the result of that was  
10 that the parties in that remanded case are going to be  
11 non-parties. It's that clear.

12 It does say that, you know, you can come back and  
13 and talk about what -- regarding whether and on what  
14 conditions the transferred cases should be coordinated with  
15 the MDL in Virginia cases, but it doesn't say they will be.

16 Again, I'm not sure why, when this issue came up  
17 in November, we're now dealing with it in April on the eve  
18 of filing summary judgment motions and motions in limine and  
19 four months before the trial in this case.

20 I'm also concerned, to be honest with you -- you  
21 know, the Texas case is a much different case now that it's  
22 in Texas than it was in the MDL. Obviously there are  
23 issues, and, as Google has pointed out, there are some other  
24 claims that weren't being involved in the MDL case, the --  
25 that are now part of the Texas case. A bigger case, a lot

1 more depositions involved, a completely different set of  
2 circumstances. And I'm concerned that the MDL Court has  
3 denied a similar request. And we are coordinating with the  
4 MDL Court, and for our Court to take a different position  
5 than the MDL Court, whether it could be used as a back door  
6 for the MDL plaintiffs or not, I think is an open issue. I  
7 don't think it's as clear as the plaintiffs in this case  
8 indicate, that if you're getting information through a  
9 coordination of discovery -- and it is discovery -- that  
10 there may be the opportunity to share that information with  
11 the MDL plaintiffs would again be backdooring Judge Castel's  
12 denial of a request, not just a he-hasn't-acted-on-it kind  
13 of a request.

14           So, for all these reasons, I deny the motion at  
15 this time.

16           Anything else from the parties today?

17           MR. JUSTUS: No, Your Honor.

18           THE COURT: Okay. Anything else?

19           MS. WOOD: Your Honor, I just want to make one  
20 clarification for the record.

21           The day the MDL -- the Texas case was remanded, I  
22 sent an email personally to counsel for Google to begin the  
23 coordination process for the coordination. I just don't  
24 want the Court left with the misimpression that we didn't  
25 act promptly.

1 THE COURT: And as you know, you can file a motion  
2 on a Friday and get it heard the following Friday.

3 MS. WOOD: Understood, Your Honor. We --

4 THE COURT: That's exactly what you did in this  
5 case, and you filed that motion a week ago today.

6 MS. WOOD: Yes, Your Honor. We foolishly thought  
7 that we could negotiate something with Google.

8 THE COURT: Okay. All right. Okay. Anything  
9 else?

10 Court will be adjourned.

11 (Proceedings adjourned.)

12 -----

13 I certify that the foregoing is a true and accurate, to the  
14 best of my ability, transcription of proceedings recorded by  
15 electronic sound recording (FTR system).

16  
17 Stephanie Austin

18 Stephanie M. Austin, RPR, CRR  
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